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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,894	07/24/2006	Alison M. Jones	18780-008US1 CGL03/0260WO	7347
38550	7590	06/07/2007	EXAMINER	
CARGILL, INCORPORATED LAW/24 15407 MCGINTY ROAD WEST WAYZATA, MN 55391			MACAULEY, SHERIDAN R	
ART UNIT		PAPER NUMBER		
1609				
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06/07/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/565,894	JONES ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Sheridan R. MacAuley	1609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 24 July 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 27-75 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 27-75 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 27-37 and 68-73, drawn to a method of making a feed additive using an organic acid producing microbe.

Group II, claim(s) 27-31, 38-40 and 68-73, drawn to a method of making a feed additive using a direct fed microbial.

Group III, claim(s) 27-31, 41-44 and 68-73, drawn to a method of making a feed additive under conditions that induce at least one microbe to produce or increase production of one or more enzymes.

Group IV, claim(s) 27-31, 45-54 and 68-73, drawn to a method of making a feed additive under conditions that generate an enhanced steep-water having at least about 70% yeast on a dry weight basis.

Group V claim(s) 55 drawn to a yeast extract.

Group VI, claim(s) 27-31, 56-60 and 68-73, drawn to a method of making a feed additive under conditions that induce at least one microbe to produce or increase production of one or more vitamins.

Group VII, claim(s) 27-31 and 61-73, drawn to a method of making a feed additive under conditions that induce at least one microbe to produce or increase production of free amino nitrogen or one or more amino acids.

Group VIII, claim(s) 74-75, drawn to a feed additive or feedstock.

2. The inventions listed as Groups I through VIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the

same or corresponding special technical features for the following reasons: The technical feature common to groups I through VIII is a method of making feedstock comprising providing corn steep-water having a solids content of from about 8% to about 50% on a dry weight basis, fermenting the steep-water in the presence of at least one microbe to generate fermented steep-water, and drying the fermented steep-water to generate an enhanced steep-water having a solids content of from about 30% to about 90% on a dry weight basis, thereby making said additive or feedstock. However, Goto et al. (US Pat. 3,655,396, 1972) teaches a method of making a feed additive comprising fermenting the corn steep water having a solids content of 8% in the presence of a microbe, and drying the fermented steep water to generate a steep water having a solids content of about 84.5 (i.e. the product contained 15.5% moisture; abstract, col. 4, lines 35-42, col. 6, lines 55-69). Therefore, the inventions of Groups I through VIII do not share a special technical feature that makes a contribution over the prior art.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The groups of species are as follows:

- A. If applicant elects either Group I, II, III, IV, VI or VII, election is required of microbes that are either endogenous (recited in claim 30) or exogenous (recited in claim 31) to the steep water.
- B. If applicant elects Group I, election is required of the various species of organic acid-producing microbes recited in claim 33. For example, applicant may elect a lactic acid-producing microbe or a citric acid-producing microbe.
- C. If applicant elects Group I, election is required of the various species of microbes recited in claim 34. For example, applicant may elect *Lactobacillus* spp., *Lactococcus* spp., or *Propionibacterium jensenii*.

- D. If applicant elects Group II, election is required of the various species of microbes recited in claim 39. For example, applicant may elect *Lactobacillus casei*, *Bacillus subtilis*, or a specific combination of the species recited in the claim.
- E. If applicant elects Group III, election is required of the various species of microbes recited in claim 42. For example, applicant may elect *Bacillus licheniformis*, *Aspergillus niger*, or a specific combination of the species recited in the claim.
- F. If applicant elects Group III, election is required of the various enzymes recited in claim 44. Applicant may elect a protease, as xylanase, an amylase or a phytase.
- G. If applicant elects Group IV, election is required of the various species of microbes recited in claim 46. For example, applicant may elect *Saccharomyces cerevisiae* or *Candida utilis*.
- H. If applicant elects Group VI, election is required of the various species of microbes recited in claim 57. For example, applicant may elect *Ashbya gossypii*, *Bacillus* spp., or a specific combination of the species recited in the claim.
- I. If applicant elects Group VI, election is required of the various vitamins recited in claim 58. For example, applicant may elect riboflavin or thiamine.

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J. If applicant elects Group VII, election is required of the various microbes recited in claim 62. For example, applicant may elect *Aspergillus oryzae* or *Brevibacterium flavum*.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the manner set forth above.

The following claim(s) are generic: For species group A, claim 27 is generic. For species group B, claim 27 and 32 are generic. For species group C, claims 27, 32 and 33 are generic. For species group D, claims 27 and 38 are generic. For species groups E and F, claims 27 and 41 are generic. For species group G, claims 27 and 45 are generic. For species groups H and I, claims 27 and 56 are generic. For species group J, claims 27 and 61 are generic.

4. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The inventions listed as Groups I through VIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The technical feature common to groups I through VIII is a method of making feedstock comprising providing corn steep-water having a solids content of from about 8% to about 50% on a dry weight basis,

fermenting the steep-water in the presence of at least one microbe to generate fermented steep-water, and drying the fermented steep-water to generate an enhance steep-water having a solids content of from about 30% to about 90% on a dry weight basis, thereby making said additive or feedstock. However, Goto et al. (US Pat. 3,655,396, 1972) teaches a method of making a feed additive comprising fermenting the corn steep water having a solids content of 8% in the presence of a microbe, and drying the fermented steep water to generate a steep water having a solids content of about 84.5 (i.e. the product contained 15.5% moisture; abstract, col. 4, lines 35-42, col. 6, lines 55-69). Therefore, the inventions of Groups I through VIII do not share a special technical feature that makes a contribution over the prior art.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan R. MacAuley whose telephone number is (571) 270-3056. The examiner can normally be reached on Mon-Thurs, 7:30AM-5:00PM EST, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Mosher can be reached on (571) 272-0906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM

*Mary Mosher*  
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SUPERVISORY PATENT EXAMINER  
5-30-07